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Supreme Court, U.S.
FILED
FEB 25 2005
OFFICE OF THE CLERK

No. 04-881

In the Supreme Court of the United States

JAMES LOCKHART, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the Department of Education can collect defaulted student loans by offsetting a portion of a debtor's Social Security benefits without regard to the ten-year limitation period under the Debt Collection Act, 31 U.S.C. 3716(e)(1), given that Congress has expressly abrogated all otherwise applicable statutes of limitations for the collection of student loans.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 376 F.3d 1027. The order of the district court (Pet. App. 8a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2004. A petition for rehearing was denied on November 4, 2004 (Pet. App. 9a). A petition for a writ of certiorari was filed on December 29, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Title IV, Part B of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1070 *et seq.*, establishes a set of programs commonly known as the Guaranteed Student

Loan (GSL) program.[1] The GSL program encourages lenders to make funds available to students who might not otherwise be able to obtain or afford commercial loans to finance the costs of post-secondary education. Under the GSL program, banks that loan money to students receive a guarantee from state or other non-profit organizations that loans will be repaid if borrowers default. 20 U.S.C. 1078(b)(1)(A) and (G). That guarantee is reinsured by the Department of Education under an insurance agreement. 20 U.S.C. 1078(b)(1) and (c).

If a student loan borrower defaults on a loan, the guaranty agency reimburses the lender and takes an assignment of the loan. 20 U.S.C. 1078(b)(1); 34 C.F.R. 682.406. The guaranty agency thereafter may request (usually within 45 days of paying the lender) that the Department of Education reimburse the guaranty agency under the insurance agreement. 20 U.S.C. 1078(c)(1)(A); 34 C.F.R. 682.404(a)(1). The guaranty agency then must exercise "due diligence" to collect the debt. 20 U.S.C. 1078(c)(2)(A); 34 C.F.R. 682.410(b)(6) (setting forth collection effort requirements). If the guaranty agency is unable to collect the debt, the loan is assigned to the Department of Education. 34 C.F.R. 682.409(a) and (c)(1).

b. Various statutes provide for the effective and efficient collection of delinquent student loan debts. See, *e.g.*, 31 U.S.C. 3720A (tax refund offset); 5 U.S.C. 5514 (salary deduction for federal employees); 20 U.S.C.

[1] In 1992, Congress renamed the GSL program the Federal Family Education Loan Program. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 411(a)(1), 106 Stat. 510. Because the loans at issue in this case were issued before 1992, we refer to the program as the GSL program.

1095a, 31 U.S.C. 3720D (salary garnishment for any employee); see also 11 U.S.C. 523(a)(8) (limiting student loan discharge in bankruptcy). One such statute is the Debt Collection Act, 31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Improvement Act, which establishes, *inter alia*, an administrative offset program. Under the administrative offset program, the Department of the Treasury withholds funds (such as income tax refunds) payable by the United States to an individual to satisfy a claim against that individual by a federal agency. 31 U.S.C. 3716(c), 3720A. The Debt Collection Act contains a limitation period, however, which provides that administrative offset is generally not available to collect "a claim * * * that has been outstanding for more than 10 years." 31 U.S.C. 3716(e)(1).

In 1991, Congress amended the HEA to abrogate all statutes of limitations that would otherwise be applicable to efforts to collect student loans. Congress achieved that result in 20 U.S.C. 1091a(a), which provides:

> Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

20 U.S.C. 1091a(a)(2)(D). Congress further expressed that "[i]t is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the

period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Accordingly, the Secretary of Education has determined that it is no longer subject to the Debt Collection Act's ten-year limitation period in seeking repayment of delinquent student loans by administrative offset. See 20 U.S.C. 1091a(a)(2)(D) ("no limitation shall terminate the period within which * * * an offset" can be taken by the Secretary "for the repayment" of student loans). The Department of the Treasury has concurred in that view. 67 Fed. Reg. 78,936 (2002) (observing that debts for "education loans" "may be collected by offset legally if more than ten years delinquent").

c. Section 207 of the Social Security Act, entitled Assignment of Benefits, exempts Social Security benefits from any "execution, levy, attachment, garnishment, or other legal processes" unless another statute "express[ly]" makes reference to Section 207. 42 U.S.C. 407(a) and (b). Before 1996, the Debt Collection Act did not expressly refer to Section 207 in authorizing administrative offset.

In 1996, Congress amended the Debt Collection Act explicitly to make Social Security benefits subject to administrative offset under the Debt Collection Act. See 31 U.S.C. 3716(c)(3)(A)(i) ("Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act) * * * all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section."). The Debt Collection Act further provides that the first $9000 of each debtor's annual Social Security benefits shall be exempt from administrative offset. 31 U.S.C. 3716(c)(3)(A)(ii). Implementing regulations of the Department of Treasury further limit the amount of

offset of benefits to the lesser of (i) the amount of the debt, including any interest, penalties and administrative costs; (ii) an amount equal to 15 % of the monthly covered benefit payment; or (iii) the amount, if any, by which the monthly covered benefit payment exceeds $750. 31 C.F.R. 285.4(e). The Department of the Treasury, after making necessary modifications to its computer system, regulations, and administrative procedures, began implementing the administrative offset program for Social Security benefits in May 2001 with full implementation in 2002. Financial Management Service, U.S. Dep't of the Treasury, *Fact Sheet: Delinquent Debt Collection, Fiscal Year 2004, Major Accomplishments* (visited Feb. 24, 2005) <http://fms.treas.gov/news.factsheets.delinquent_debtcollection.html>.

2. Between 1984 and 1989, four institutions of higher education issued nine GSLs to petitioner. C.A. App. Supp. Rec. Exh. 1, at 45 (SER). Petitioner failed to repay most of his obligations under those loans, and, by March 2002, his debts exceeded $80,000. SER 2, at 5, 16. Although the record in this case does not contain all of the relevant information, the Department of Education advises us that its records reflect that, during the period 1991 through 1996, the affected guaranty agencies received federal reinsurance for petitioner's delinquent debts, made numerous attempts to contact petitioner and obtain collection on the defaulted loans, and ultimately assigned the loans to the Department during the period 1998 through 2001. The Department of Education also informs us that on August 22, 1999, September 14, 2001, and August 19, 2002, the Department notified petitioner by letter that his student loan obligations were subject to administrative offset; that he

had certain rights to object to administrative offset; and that he could avoid offset by making voluntary arrangements to repay the debts. See SER 1, at 44-46 (Aug. 19, 2002 notice).

In February 2002, petitioner contacted the Department of Education, asserting in part that the collection of his student loans by administrative offset was time-barred. SER 3, at 17-24. The Department responded on March 6, 2002, explaining that the HEA had abrogated all statutes of limitations on the collection of student loans. *Id.* at 35. In May 2002, the Department of the Treasury began withholding $93 per month from petitioner's Social Security payment by way of administrative offset. SER 1, at 1. The Department of Education advises us that, when petitioner started to receive additional Social Security benefits, the government correspondingly increased the offset, first to $136.50 per month on March 3, 2003; then to $139.35 on January 2, 2004; and, most recently, to $143.10 per month on January 3, 2005. The Department of Education also advises that as of January 2005, the government has collected on petitioner's loans by Social Security offsets a total of $3,555.45 and that the total remaining outstanding debt on petitioner's loans, including interest and administrative fees, is $76,414.91.

3. In March 2002, petitioner, proceeding pro se, filed a complaint in federal district court, objecting to the offset of his Social Security benefits. SER 2, at 1-23. The complaint appeared to arise under the bankruptcy statutes and alleged that petitioner had "committed acts of bankruptcy and thereby 'filed' for bankruptcy." *Id.* at 15. The complaint stated that the government's collection efforts were subject to an automatic stay, *id.* at 15, 17, and urged the district court to impose civil sanctions

on the government and/or to force the parties to enter into a settlement agreement. *Id.* at 19-20. In the midst of those assertions, the complaint also stated that the government's attempt to "garnish debtor's [Social Security] payments by administrative offset" was "time barred" under 31 U.S.C. 3716(e)(1) because "more than 10 years have passed since debtor's education loans became outstanding." SER 2, at 14a.

The district court, unable to discern the legal theory in petitioner's complaint, directed him to show cause why the complaint should not be dismissed for failure to state a claim. SER 10, at 1. Petitioner filed a response ten days later, but the district court was still unable to identify a viable federal claim. Pet. App. 8a. The court thereafter dismissed the complaint. *Ibid.*

On appeal, after briefing in which petitioner appeared pro se, the court of appeals ordered the appointment of counsel to represent petitioner. The parties subsequently filed supplemental briefs that focused on whether the ten-year statute of limitations in the Debt Collection Act applied to the collection of student loans by Social Security offset. The government "assume[d], solely for purposes" of the appeal, that petitioner's "delinquent student loans [were] over ten years old." C.A. Supp. Br. 11 n.4.

The court of appeals held that petitioner's complaint, liberally construed, should be deemed to allege a cognizable federal claim. Pet. App. 3a. The court stated that, although petitioner's statute of limitations argument was "buried in a barrage of other contentions which the district court understandably found confusing," petitioner's complaint sufficiently raised the argument that the administrative offset of petitioner's Social Security benefits was time-barred. *Ibid.*

The court of appeals held, however, that petitioner's claim should be rejected on the merits. The Ninth Circuit observed that the HEA, as amended in 1991, "overr[ode]" the Debt Collection Act's ten-year statute of limitations "as applied to student loans." Pet. App. 6a. The court further stated that, "in 1996, Congress explicitly authorized the offset of Social Security benefits." *Ibid.* The statutory scheme thus made clear that the ten-year limitations period in the Debt Collection Act did not apply to the collection of student loans by Social Security offset. *Ibid.*

ARGUMENT

The court of appeals correctly concluded that Social Security offsets to satisfy delinquent student loan debts, like all other forms of federal benefits subject to offset for student loan collection, are not subject to the ten-year statute of limitations set forth in the Debt Collection Act. We nevertheless agree with petitioner that the Court should grant review of the issue. The courts of appeals are divided on the question whether the Debt Collection Act's ten-year statute of limitations applies to the collection of delinquent student loans by Social Security offset, and this question is of substantial and recurring importance to the federal student loan collection program. Although this case appears to be an appropriate vehicle to address the issue, the Court may wish to hold this petition pending the disposition of the government's petition, filed today, in *Lee* v. *Paige*, 376 F.3d 1179 (8th Cir. 2004), in which the issue is squarely presented on a fully developed record.

1. The court of appeals correctly held that the Secretary of Education, in seeking repayment of delinquent federal student loans, has the authority to conduct

Social Security offsets without regard to the ten-year period specified in the Debt Collection Act, 31 U.S.C. 3716(e)(1), for the collection of federal claims. The Higher Education Act expressly abrogates all time restrictions on the collection of student loans, including those otherwise applicable to collection by way of offset. Thus, the HEA provides that, "*[n]otwithstanding any other provision of [law], * * * no limitation shall terminate the period within which * * * an offset*" can be taken by the government "for the repayment of" educational loans. 20 U.S.C. 1091a(a)(2)(D) (emphasis added). The plain terms of the HEA therefore remove any time limitation for conducting administrative offsets with respect to federal student loan debt.

Contrary to petitioner's contention (Pet. 19-22), there is no basis for limiting the plain language of the HEA and distinguishing offsets of Social Security payments from other mechanisms, such as offsetting tax refunds or salary deductions from an employee's salary. Petitioner erroneously relies (Pet. 20) on the fact that 42 U.S.C. 407 requires an express Congressional statement to make Social Security benefits subject to administrative offset. The Debt Collection Act contains such an express statement, 31 U.S.C. 3716(c)(3)(A)(i), and thus satisfies the requirement of Section 407. No additional statement to the same effect was required in the HEA, because the HEA addresses the applicable statutes of limitations for the use of offsets in the collection of student loans, but it is not the provision that *authorizes* administrative offset. Only the authorization of offset is governed by an express cross-reference rule, and the relevant authorization is provided by the Debt Collection Act in 31 U.S.C. 3716, which, as stated, makes expressly clear that (notwithstanding 42 U.S.C. 407(a))

Social Security benefits are subject to offset to satisfy a claim by the federal government.[1]

Nor is it significant, as suggested by petitioner (Pet. 7, 21-22), that Congress abrogated all limitation periods under the HEA in 1991, while Social Security benefits were not subject to offset until Congress amended the Debt Collection Act in 1996. That sequence of the two enactments does not provide any basis for ignoring the plain language of the provisions. The HEA operates by its own terms regardless of the date of passage of an otherwise applicable statute of limitations. 20 U.S.C. 1091a(a)(2) ("*Notwithstanding any other provision of statute*, * * * no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset * * * initiated or taken."). In any event, when Congress in 1996 explicitly made Social Security benefits subject to offset, Congress was necessarily aware that the HEA already had rendered the Secretary exempt from the Debt Collection Act's ten-year limitation period. Therefore, as the court of appeals correctly held, the Secretary of Education may conduct Social Security offsets to collect petitioner's delinquent student loans without regard to the time limit under the Debt Collection Act. Pet. App. 6a.

2. a. Although the decision of the court of appeals is correct, we agree with petitioner that the Court should grant review of the issue. The courts of appeals are

[1] Petitioner also relies (Pet. 8, 21) on the imposition of "safeguards" under the Debt Collection Act that limit the amount of Social Security benefits subject to offset, 31 U.S.C. 3716(c)(3)(A)(ii), and that require notice and an opportunity for agency review, 31 U.S.C. 3716(a). Petitioner does not dispute, however, that the Secretary has complied with those safeguards in this case.

divided over the question whether the Debt Collection Act's ten-year statute of limitations applies to the collection of delinquent student loans by administrative offset of Social Security benefits.

In contrast to the decision here, the Eighth Circuit held in *Lee* v. *Paige*, 376 F.3d at 1180, that the Secretary of Education is bound by the ten-year statute of limitations under 31 U.S.C. 3716(e). The Eighth Circuit recognized that the plain text of the Higher Education Act, as amended in 1991, "eliminated statutes of limitations" on the collection of "defaulted federal student loans." *Ibid.* The court further acknowledged that the Debt Collection Improvement Act expressly "authorize[d]" the Secretary "to recover money owed on delinquent student loans * * * by offsetting a debtor's social security benefits." *Ibid.* The court nevertheless found that Congress did not "explicitly" permit the Secretary to conduct such Social Security offsets beyond the ten-year limitations period in the Debt Collection Act. *Ibid.*

This Court's review is warranted to resolve that direct circuit conflict, which prevents the uniform administration of a central part of the federal student loan program. See *Clay* v. *United States*, 537 U.S. 522, 526 (2003) (a writ of certiorari was granted "[t]o secure uniformity in the application of" the federal statute); *Brotherhood of Locomotive Eng'rs* v. *Atchison, Topeka & Santa Fe R.R.*, 516 U.S. 152, 156 (1996) (a writ of certiorari was granted "[b]ecause of the importance of uniform nationwide application of" the federal regulatory scheme). The federal government has a substantial interest in ensuring that student loan collection proceeds on a uniform basis nationwide. *Brannan* v. *United Student Aid Funds, Inc.*, 94 F.3d 1260, 1266

(9th Cir. 1996) (the "federal student loan program * * * requires uniformly administered collection standards in order to remain viable"), cert. denied, 521 U.S. 1111 (1997). Only by applying consistent rules throughout the country can the federal government endeavor to hold each delinquent debtor accountable for her federal obligations. *Id.* at 1264-1266; see also *In re Murphy*, 282 F.3d 868, 870 (5th Cir. 2002) (the application of a "uniform[]" rule to student loan obligations "prevent[s] recent graduates from reneging on manageable debts" and helps "preserve the solvency of the student loan system"); cf. *Hodges* v. *Thompson*, 311 F.3d 316, 319 (4th Cir. 2002) (noting, in another context, that federal standards can serve to prevent individuals from "avoid[ing] their [financial] obligations simply by moving across local or state lines") (internal quotation marks omitted), cert. denied, 540 U.S. 811 (2003).

b. The Court's review is also warranted because the view adopted by the Eighth Circuit undermines the government's student loan collection efforts. The purpose of the HEA's abrogation of limitation periods is "to ensure that obligations to repay loans * * * are enforced without regard to any Federal * * * statutory * * * limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Subjecting Social Security offsets to a ten-year limitation period frustrates that purpose and significantly reduces the effectiveness of an important collection mechanism.

The offset process has proven to be an effective means of addressing the problem of student loan defaults. Thus, during the years 2000-2003, the Department of Education collected through the offset program approximately $400 million per year in delinquent

student loan debt. Financial Management Service, U.S. Dep't of the Treasury, *Fiscal Year 2003 Report to Congress: U.S. Government Receivables and Debt Collection Activities of Federal Agencies* 19 (2004).

The Secretary's ability to offset Social Security benefits for delinquent loans that are more than ten years old is integral to the success of the offset program. Administrative offset in such circumstances typically occurs only because the student debtor has successfully evaded for many years (or even decades) all other efforts to collect the debt by the lender, the guaranty agency, and the Department of Education. Moreover, the vast majority of recipients of federal student loans receive such financial assistance under the HEA when they are young adults. Many such student loan debtors will not begin to receive Social Security benefits until they reach retirement age, which may occur many years after the Department of Education is entitled to collect on defaulted student loan debts. For instance, the Department of Education advises us that, as of August 13, 2004, the Secretary had certified to the Department of the Treasury almost $7 billion in delinquent student loan debt, and that over half of that amount, *i.e.*, approximately $3.6 billion, reflected student loan debt over ten years old. For individuals having student loan debt who do not receive Social Security benefits until more than ten years after the Secretary is entitled to collect on the loans, the rule adopted by the Eighth Circuit would deprive the Secretary of the most efficient (and, in many instances, the only) means of collecting delinquent debt to the United States.

Application of a ten-year limitation period would also harm the agency's collection efforts with respect to individuals such as petitioner, who begin receiving Social

Security benefits, such as disability benefits, before retirement. SER 2, at 2. The Debt Collection Act and implementing regulations limit the amount of Social Security benefits that are subject to offset. 31 U.S.C. 3716(c)(3)(A)(ii); 31 C.F.R. 285.4(e). It therefore could take considerably more than ten years to collect many delinquent student loan obligations. For instance, in the case of petitioner, even after over two years of offsets, the Secretary has been able to collect only about $90-140 per month—or a total of approximately $3500—in order to reduce petitioner's outstanding debt that currently exceeds $75,000. A lengthy collection period is therefore necessary for the Secretary of Education to ensure maximum collection of delinquent student loans.[2]

Congress has expressly determined in the HEA that the Secretary of Education should have an unlimited amount of time to enforce student loan obligations. 20 U.S.C. 1091a(a). This Court's review of the issue is necessary to ensure that Congress's intent is evenly administered throughout the country.

c. In the court of appeals, the government assumed for purposes of the court of appeals' consideration of the appeal that at least one of petitioner's loans would have expired under the Debt Collection Act's ten-year time limit of 31 U.S.C. 3716(e), and that issue was not litigated or decided below. Upon consideration of the issue, the United States believes that the ten-year period has expired on at least a portion of petitioner's outstanding delinquent loan obligations and that therefore this case

[2] For individuals with a disability, the Secretary of Education's regulations permit administrative discharge upon a showing of total and permanent disability. 42 C.F.R. 682.402(c), 685.212(b), 674.61(b). The Department's records do not reflect that petitioner sought to avail himself of those regulations to discharge his debt.

appears to be an appropriate candidate for certiorari review. Regulations issued jointly by the Department of the Treasury and the Department of Justice provide that the Debt Collection Act's limitation period begins to run once a federal agency's "right to collect the debt first accrued," unless the government lacked actual or constructive knowledge of its right to collect the debt. 31 C.F.R. 901.3(a)(4). In this case, the Department of Education's right to collect petitioner's debts by way of administrative offset first accrued upon the Department's payment of reinsurance to a guaranty agency. At that time, the debt was subject to collection by administrative offset under the Debt Collection Act. 31 U.S.C. 3716(c)(6); 34 C.F.R. 682.410(b)(6)(ii).

The record reflects that the earliest date that the Department reinsured a portion of petitioner's debt occurred in 1991. SER 1, at 44. Thus, absent circumstances that would have prevented the collection of petitioner's debt by offset, and therefore would have tolled the limitation period under Section 3716(e), the ten-year period with respect to petitioner's debt obligations began to expire in 2001, before the Department of the Treasury began offsetting petitioner's Social Security payments in May 2002. Because the issue was not litigated below, however, no court has passed on the question whether the ten-year limitation period (if deemed applicable notwithstanding the HEA's abrogation of all limitations periods) would bar the government from collecting any of petitioner's debts through administrative offset of Social Security benefits. Moreover, although we are not aware of any filing of bankruptcy by petitioner that might have tolled the ten-year period by virtue of the Bankruptcy Code's automatic stay provision, 11 U.S.C. 362, petitioner's complaint, albeit drafted

without the benefit of counsel, alleges a filing of bankruptcy and invokes the protection of the automatic stay provision. SER 2, at 4, 15, 17. Because the applicability of the Debt Collection Act's time limit to the facts of this case was not addressed below, this Court may wish to hold the petition pending the Court's disposition of the Secretary of Education's petition in *Lee*, *supra*, which is being filed today. In that case, the debtor was represented by counsel in the district court and the record is clear that the ten-year limitation period under the Debt Collection Act has expired with respect to all the outstanding student loan debts at issue.

CONCLUSION

The petition for a writ of certiorari should be granted or, in the alternative, held pending the disposition of the petition in *Lee*, *supra*.

Respectfully submitted.

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